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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,237	12/29/2003	Barrett W. Brown	06702-008001	8905
26161	7590	08/22/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			MATHEW, FENN C	
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 08/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/750,237	Applicant(s) BROWN, BARRETT W.	
	Examiner Fenn C. Mathew	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/19/2006 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Showers (U.S. 5,226,864). Referring to claim 1, Showers discloses an assembly comprising a multi-level structure comprising a frame defined by permanent upright members (11) and at least one removable upright member disposed inside the frame and removable from the playset without disassembling the frame, and a plurality of steps configured to allow a child to climb from a first level to a second level (12), the steps comprising a platform sized to accommodate the entire body of a child, the steps mounted within the multi-level structure so that the steps are capable of being removed

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without damaging the structure. Referring to claim 3, Showers teaches a plurality of removable upright members attached to the steps. Referring to claim 7, Showers discloses the step having four corners with upright members adjacent the corners. Referring to claim 8-9, as broadly interpreted Showers discloses climbing rungs extending between adjacent members (23) with the rungs defining a pair of ladders. Referring to claim 10, Showers discloses the first level is at ground level. Referring to claim 11, Showers discloses a device wherein the removal of the steps leaves an open play area. Referring to claim 12, Showers discloses are mounted so that they may be removed at any time during the lifetime of the playset as best understood.

4. Claims 1, and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Poo (U.S. 4,941,658). Referring to claim 1, Poo discloses a multi-level structure including a frame defined by permanent upright members (1), and at least one removable upright member (31) disposed inside the frame and removable from the playset without disassembling the frame, and a plurality of steps configured to allow a child to climb from a first level of the structure to the second level of the structure, the second level comprising a deck (P), the steps mounted within the structure so that they are removable. Referring to claim 3, Poo discloses a plurality of upright members, and steps (31) attached to the upright members. Referring to claim 4, Poo discloses steps removably attached to the removable upright members. Referring to claim 5, note that the steps are horizontally mounted members configured to receive an upper portion of the upright members.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 6 and 13-17 are are rejected under 35 U.S.C. 103(a) as being unpatentable over Poo in view of Durlacher (U.S. 2,954,977). Referring to claim 6, Poo discloses the claimed invention, but fails to teach the upper portion of the removable upright members being notched in order to receive the horizontal members. Durlacher teaches in an analogous device that it is desirable to provide notches in members to better secure horizontal members that are attached, thereby inhibiting movement. In view of the teachings of Durlacher it would have been obvious to one of ordinary skill in the art at the time of invention to provide the upright members of Poo with notches as taught by Durlacher in order to better secure the horizontal members and upright members and to prevent unwanted movement.

Referring to claims 13-17, the modified Poo device discloses the claimed structural limitations. Furthermore, Poo also discloses the method steps of providing (inherently) the structure and further discusses removably installing the structure, including steps for assembly and disassembly. The specific method steps would have been obvious to one of ordinary skill in the art as they entail standard steps that would necessarily be performed when assembly and disassembling the device.

Response to Arguments

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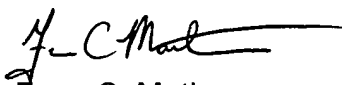
7. Applicant's arguments with respect to claims 1 and 3-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Fenn C. Mathew
August 21, 2006